

WILMER, CUTLER & PICKERING

1666 K STREET, N. W.

WASHINGTON, D. C. 20006

CABLE ADDRESS: WICRNG WASH., D. C.

INTERNATIONAL TELEX: 440-239

TELEX: 89-2402

TELEX: 202 872-6000

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5 CHEAPSIDE

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JAMES T. KILBRETH, III
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VICKI E. LAND
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BRUCE MAXIMOV
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WILLIAM J. PERLSTEIN
PHILLIP L. RADOFF
WILLIAM R. RICHARDSON, JR.
RENÉ TOWNSEND ROBINSON
JOHN ROUNSAVILLE, JR.
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GAIL F. SCHULZ
KAREN KOSER SCHWARTZ
ARTHUR B. SPITZER
ALAN B. STERNSTEIN
ARTHUR M. WEISBURD
CAROL DRESCHER WEISMAN
ALAN S. WEITZ
ALEXANDER F. WILES
ANN O. WILLIAMS
ROBERT G. WILSON
ROGER M. WITTEN

EZEKIEL G. STODDARD
ARTHUR Z. GARDINER, JR.
COUNSEL

RECORDATION NO. 9247

FEB 22 1978 - 3 30 PM

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 9247

FEB 22 1978 - 3 30 PM

INTERSTATE COMMERCE COMMISSION

FEB 23 1978

Fee \$ 1.00

ICC Washington, D. C.

Dear Mr. Homme:

On behalf of First Security Bank of Utah, N.A., I am submitting for filing and recording under Section 20c of the Interstate Commerce Act, ten (10) executed counterparts each of the following four documents:

1. Conditional Sale Agreement (No. 1) dated as of January 1, 1978 between First Security State Bank as Owner-Trustee, Salt Lake City, Utah, New England Merchants Leasing Corporation, B-6, Owner-Vendee, Boston, Massachusetts, ACF Industries Incorporated, Vendor, 750 Third Avenue, New York, New York 10017, Union Tank Car Company, Vendor, 11 West Jackson Boulevard, Chicago, Illinois 60604, Richmond Tank Car Company, Vendor, 777 South Post Oak Road, Suite 777, Houston, Texas 77056.

2. Agreement and Assignment (No. 1) dated as of January 1, 1978, relating to the above-mentioned CSA, between ACF Industries Incorporated, Union Tank Car Company, and Richmond Tank Car Company each as Builder-Assignor, and First Security Bank of Utah, N.A., as Agent-Assignee, Salt Lake City, Utah.

Lease of Railroad Equipment (No. 1) dated as of January 1, 1978 between Hooker Chemical Properties Corporation as Lessee, Los Angeles, California, First Security State Bank as Trustee-Lessor, and New England Merchants Leasing Corporation, B-6, as Owner-Lessor.

RECORDATION NO. 9247

FEB 22 1978 - 3 30 PM

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 9247

FEB 22 1978 - 3 30 PM

INTERSTATE COMMERCE COMMISSION

RECEIVED
FEB 23 3 27 PM '78
CERTIFICATION UNIT

*Counterpart
Larry D. Utterback*

4. Assignment of Lease and Agreement (No. 1) dated as of January 1, 1978, relating to the above-mentioned Lease, by and between First Security State Bank as Owner-Assignor and First Security Bank of Utah, N.A., as Agent-Assignee.

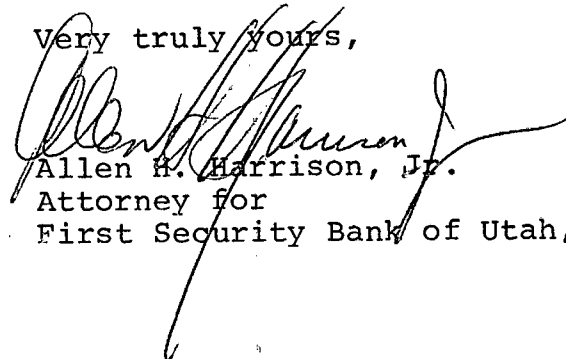
The equipment covered in the above-mentioned CSA and Lease is as attached: Annex B as listed in the CSA, and Appendix A as listed in the Leases.

Please enter in the ICC Register each party above mentioned under their own name, cross-indexing to these filings as may be necessary.

Enclosed is our firm's check for \$100.00 in payment of the recording fee.

Once the filings have been made, please return to the bearer the stamped counterparts of each of the four documents not required for filing purposes, the fee receipt and the letter from the Interstate Commerce Commission acknowledging the filings, together with the extra copies of this letter of transmittal.

Very truly yours,


Allen H. Harrison, Jr.
Attorney for
First Security Bank of Utah, N.A.

Mr. H. Gordon Homme, Jr.
Acting Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Encs.

BY HAND

9247-A
RECORDATION NO. Filed & Recorded

FEB 23 1978 -3 30 PM

INTERSTATE COMMERCE COMMISSION

AGREEMENT AND ASSIGNMENT
(No. 1)

Dated as of January 1, 1978

between

ACF INDUSTRIES, INCORPORATED,

UNION TANK CAR COMPANY,

RICHMOND TANK CAR COMPANY

and

FIRST SECURITY BANK OF UTAH, N.A.,

as Agent

AGREEMENT AND ASSIGNMENT (NO. 1) dated as of January 1, 1978, between each of ACF INDUSTRIES, INCORPORATED, UNION TANK CAR COMPANY and RICHMOND TANK CAR COMPANY (hereinafter individually called a Builder and collectively the Builders) and FIRST SECURITY BANK OF UTAH, N.A., acting as Agent (hereinafter, together with its successors and assigns, called the Assignee) under a Participation Agreement dated as of the date hereof (hereinafter called the Participation Agreement).

WHEREAS each of the Builders and FIRST SECURITY STATE BANK, acting as Trustee (hereinafter called the Owner-Trustee) under a Trust Agreement (No. 1) dated as of the date hereof (hereinafter called the Trust Agreement) with NEW ENGLAND MERCHANTS LEASING CORPORATION B-6 (hereinafter called the Owner), have entered into a Conditional Sale Agreement (No. 1) dated as of the date hereof (hereinafter called the CSA) covering the construction, sale and delivery by the Builders and the purchase by the Owner-Trustee of the railroad equipment described in Annex B to the CSA (said equipment being hereinafter called the Equipment and the Equipment constructed, sold and delivered by each Builder being hereinafter sometimes called such Builder's Equipment or its Equipment); and

WHEREAS the Owner-Trustee and HOOKER CHEMICAL PROPERTIES CORPORATION (hereinafter called the Lessee) have entered into a Lease of Railroad Equipment (No. 1) dated as of the date hereof (hereinafter called the Lease) providing for the lease to the Lessee of the Equipment;

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (hereinafter called this Assignment) WITNESSETH: that in consideration of the sum of One Dollar and other good and valuable consideration paid by the Assignee to the Builders, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained, the parties hereto agree as follows:

SECTION 1. Each Builder hereby assigns, transfers and sets over unto the Assignee:

(a) all the right, title and interest of such

Builder in and to each unit of its Equipment when and as severally delivered to and accepted by the Owner-Trustee, subject to payment to such Builder of the amount required to be paid pursuant to Section 4 hereof and of the amounts due from the Owner-Trustee to such Builder under the CSA;

(b) all the right, title and interest of such Builder in and to the CSA (except the right to construct and deliver the Equipment and the right to receive the payments specified in subparagraph (a) of § 4.3 thereof and reimbursement for taxes paid or incurred by such Builder), and except as aforesaid in and to any and all amounts which may be or become due or owing to the Builder under the CSA on account of the indebtedness in respect of the Purchase Price (as defined in the CSA) of the Equipment and interest thereon, and in and to any other sums becoming due from the Owner-Trustee under the CSA, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) of this paragraph, all such Builder's rights, titles, powers, privileges and remedies under the CSA;

without any recourse hereunder, however, against the Builder on account of the failure of the Owner-Trustee to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the CSA, provided, however, that this Assignment shall not subject the Assignee to, or transfer or in any way affect the obligations of such Builder to deliver the Equipment in accordance with the CSA or with respect to its warranties and agreements referred to in Article 14 of the CSA or relieve the Owner-Trustee from its obligations to such Builder contained in Articles 2, 3, 4, 6 and 14 of the CSA, it being agreed that all obligations of such Builder to the Owner-Trustee with respect to the Equipment shall be and remain enforceable by the Owner-Trustee, against and only against such Builder. Each Builder hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for such Builder, to demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Owner-Trustee with the terms and agreements on its part to be performed under the CSA, but at the expense and for the sole benefit of the Assignee.

SECTION 2. Each Builder agrees that it will construct its Equipment in full accordance with the CSA and will deliver the same upon completion to the Owner-Trustee in accordance with the provisions thereof; and that it will perform and fully comply with each of and all the covenants and conditions of the CSA set forth to be performed and complied with by such Builder. The Builder further agrees that it will warrant to the Assignee and the Owner-Trustee that at the time of delivery of each unit of its Equipment under the CSA it had legal title to such unit and good and lawful right to sell such unit and that such unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Owner-Trustee under the CSA and the rights of the Lessee under the Lease; and such Builder further agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by such Builder under the CSA; all subject, however, to the provisions of the CSA and the rights of the Owner-Trustee thereunder. No Builder will deliver any of its Equipment to the Owner-Trustee under the CSA until the CSA, the Lease, the Assignment and the Lease Assignment have been filed in accordance with Section 20c of the Interstate Commerce Act (such Builder being entitled to rely on advice from special counsel for the Assignee that such filing has occurred).

SECTION 3. Each Builder agrees that in any proceeding or action brought by the Assignee under the CSA for any installment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the CSA, such Builder will indemnify, protect and hold harmless the Assignee from and against all expenses, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever claimed by the Owner-Trustee or the Lessee arising out of a breach by such Builder of any obligation with respect to the Equipment or the construction, delivery or warranty thereof, or by reason of any defense, setoff or counterclaim whatsoever arising by reason of any other indebtedness or liability at any time owing to the Owner-Trustee or the Lessee by such Builder. Each Builder's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 15 of the CSA, to strike any defense, setoff, counterclaim or recoupment asserted by the Owner-Trustee or the Lessee in any such proceeding or action and (b) if the court

or other body having jurisdiction in such proceeding or action denies such motion or other action and accepts such defense, setoff or counterclaim as a triable issue in such proceeding or action, the Assignee's prompt notification to such Builder of the asserted defense, setoff or counterclaim and the Assignee's giving such Builder the right, at the Builder's expense, to compromise, settle or defend against such defense, setoff or counterclaim.

Except in cases of articles or materials specified by the Lessee and not manufactured by such Builder and in cases of designs, systems, processes, formulae or combinations specified by the Lessee and not developed or purported to be developed by such Builder, such Builder agrees, except as otherwise specifically provided in Annex A to the CSA, to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee because of the use in or about the construction or operation of any of such Builder's Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to such Builder of any claim actually known to the Assignee which is based upon any such alleged infringement and will give to such Builder the right, at the Builder's expense, to compromise, settle or defend against such claim. Each Builder agrees that any amounts payable to it by the Owner-Trustee or the Lessee with respect to its Equipment, whether pursuant to the CSA or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon such Equipment.

SECTION 4. The Assignee, on each Closing Date fixed as provided in Article 4 of the CSA, shall pay to the appropriate Builder an amount equal to the portion of the Purchase Price of the Equipment as shown on the invoice therefor then being settled for which, under the terms of subparagraph (b) of § 4.3 thereof, is payable in installments, provided that the conditions specified in Paragraphs 8 and 9 of the Participation Agreement have been satisfied and there shall have been delivered to the Assignee (with a copy to the Owner-Trustee) on or prior to such Closing Date, the following documents, in form and substance satisfactory to it and to Messrs. Cravath, Swaine & Moore, special counsel to the Assignee, in such number of counterparts as may be reasonably requested by said special counsel:

(a) a bill or bills of sale from such Builder to the Assignee transferring to the Assignee the security interest of such Builder in such units, warranting to the Assignee and to the Owner-Trustee that, at the time of delivery of such units under the CSA, the Builder had legal title to, and good and lawful right to sell, such units and such units were free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Owner-Trustee under the CSA and the rights of the Lessee under the Lease, and covenanting to defend the title to such units against demands of all persons whomsoever based on claims originating prior to the delivery of such units by such Builder under the CSA;

(b) a Certificate or Certificates of Acceptance with respect to such units as contemplated by Article 3 of the CSA and Article 2 of the Lease;

(c) an invoice of such Builder for such units and a certification by the Owner-Trustee and the Lessee as to their approval thereof;

(d) an opinion of counsel for such Builder, dated as of the Closing Date, addressed to the Assignee and the Owner-Trustee, to the effect that the aforesaid bill or bills of sale have been duly authorized, executed and delivered by such Builder and are valid and effective to vest in the Assignee the security interest of such Builder in such units, free from all claims, liens, security interests and other encumbrances (other than those created by the CSA and the rights of the Lessee under the Lease) arising from, through or under such Builder; and

(e) a receipt from such Builder for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 4) required to be made on such Closing Date to such Builder with respect to such Builder's Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Owner-Trustee.

The obligation of the Assignee hereunder to make payment for any of the Equipment assigned hereunder is hereby expressly conditioned upon the Assignee having on deposit, pursuant to the terms of the Participation Agreement, suffi-

cient funds available to make such payment and upon payment by the Owner-Trustee of the amount required to be paid by it pursuant to subparagraph (a) of § 4.3 of the CSA. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the appropriate Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of Equipment with respect to which payment has not been made by the Assignee.

SECTION 5. The Assignee may assign all or any of its rights under the CSA, including the right to receive any payments due or to become due to it from the Owner-Trustee thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, and upon giving the written notice required in Article 15 of the CSA, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. Each Builder hereby:

(a) represents and warrants to the Assignee and the Owner-Trustee that the CSA was duly authorized, executed and delivered by it, that, assuming due authorization, execution and delivery by the Owner-Trustee, is, insofar as such Builder is concerned, a legal, valid and existing agreement binding upon such Builder in accordance with its terms and that it is now in force without amendment thereto;

(b) agrees that it will from time to time, at the request of the Assignee, make, execute and deliver all such further instruments of assignment, transfer and assurance and do all such further acts as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be; and

(c) agrees that, upon request of the Assignee, it will execute any and all instruments which may be necessary or proper in order to discharge of record the CSA or any other instrument evidencing any interest of such Builder therein or in the Equipment.

SECTION 7. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Utah; provided, however, that the parties shall be entitled to all the rights conferred by Section 20c of the Interstate Commerce Act, such additional rights arising out of the filing or depositing of the CSA and this Assignment as shall be conferred by the laws of any jurisdiction in which the same shall be filed or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the marking on the units of Equipment.

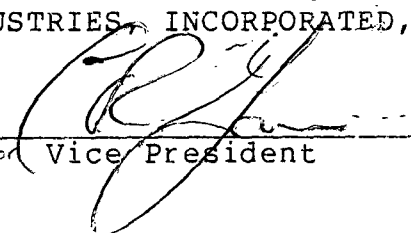
SECTION 8. The rights and obligations of the Builders under this Assignment are several in accordance with their interests and not joint. Accordingly, whenever this Assignment, by use of such designation as "each Builder", "such Builder", or other similar term, confers a right or imposes an obligation upon any Builder or its successor, such right or obligation shall be construed to accrue to or to be enforceable against only the specific Builder giving rise to such right or obligation and its successors as herein provided.

SECTION 9. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Each Builder and the Assignee shall be bound hereunder notwithstanding the failure of any other Builder to execute and deliver this Agreement or to perform its obligations hereunder. Although for convenience this Assignment is dated as of the date first above written, the actual date or dates of execution hereof by each party hereto is as stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officials, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

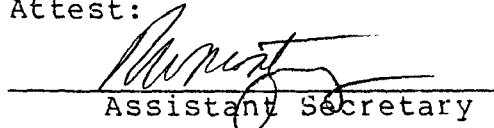
ACF INDUSTRIES, INCORPORATED,

by


Senior Vice President

[Corporate Seal]

Attest:


Assistant Secretary

UNION TANK CAR COMPANY

by H. B. Browder
Vice President

[Corporate Seal]

Attest:

A. B. Williams
Assistant Secretary

RICHMOND TANK CAR COMPANY,

b y

[Corporate Seal]

Vice President

Attest:

Assistant Secretary

FIRST SECURITY BANK OF UTAH, N.A.,

by

Authorized Officer

Seal

Attest:

Attest: J. C. MA
Authorized Officer

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment is hereby acknowledged as of January 1, 1978.

FIRST SECURITY STATE BANK,
not in its individual capacity
but solely in its capacity as
Trustee

by

Authorized Officer

STATE OF NEW YORK,)
) ss.:
 COUNTY OF NEW YORK,)

On this 23rd day of February 1978, before me personally appeared **C. R. GARR**, to me personally known, who being by me duly sworn, says that he is a ^{Senior} Vice President of ACF INDUSTRIES, INCORPORATED, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.


 Notary Public

[Notarial Seal]

My Commission expires

EDWIN F. MEYER
 NOTARY PUBLIC, State of New York
 No. 30-7917803
 Qualified in Nassau County
 Certificate filed in New York County
 Commission Expires March 30, 1978

STATE OF ILLINOIS,)
) ss.:
 COUNTY OF LAKE,)

On this 22nd day of February 1978, before me personally appeared W. B. Browder to me personally known, who being by me duly sworn, says that he is a Vice President of UNION TANK CAR COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.


 Notary Public

[Notarial Seal]

My Commission expires
August 1, 1981

STATE OF TEXAS,)
) ss.:
 COUNTY OF HARRIS,)

On this day of February 1978, before me personally appeared , to me personally known, who being by me duly sworn, says that he is a Vice President of RICHMOND TANK CAR COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

 Notary Public

[Notarial Seal]

My Commission expires

STATE OF UTAH,)
) ss.:
 COUNTY OF SALT LAKE,)

On this ^{21st} day of February 1978, before me personally appeared *Hebra J. Dorfman*, to me personally known, who being by me duly sworn, says that he is an Authorized Officer of FIRST SECURITY BANK OF UTAH, N.A., that one of the seals affixed to the foregoing instrument is the seal of said national banking association, that said instrument was signed and sealed on behalf of said national banking association by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national banking association.

Verna L. Quetawke

 Notary Public

[Notarial Seal]

My Commission expires

My Commission Expires November 15, 1981

AGREEMENT AND ASSIGNMENT
(No. 1)

Dated as of January 1, 1978

between

ACF INDUSTRIES, INCORPORATED,

UNION TANK CAR COMPANY,

RICHMOND TANK CAR COMPANY

and

FIRST SECURITY BANK OF UTAH, N.A.,

as Agent

AGREEMENT AND ASSIGNMENT (NO. 1) dated as of January 1, 1978, between each of ACF INDUSTRIES, INCORPORATED, UNION TANK CAR COMPANY and RICHMOND TANK CAR COMPANY (hereinafter individually called a Builder and collectively the Builders) and FIRST SECURITY BANK OF UTAH, N.A., acting as Agent (hereinafter, together with its successors and assigns, called the Assignee) under a Participation Agreement dated as of the date hereof (hereinafter called the Participation Agreement).

WHEREAS each of the Builders and FIRST SECURITY STATE BANK, acting as Trustee (hereinafter called the Owner-Trustee) under a Trust Agreement (No. 1) dated as of the date hereof (hereinafter called the Trust Agreement) with NEW ENGLAND MERCHANTS LEASING CORPORATION B-6 (hereinafter called the Owner), have entered into a Conditional Sale Agreement (No. 1) dated as of the date hereof (hereinafter called the CSA) covering the construction, sale and delivery by the Builders and the purchase by the Owner-Trustee of the railroad equipment described in Annex B to the CSA (said equipment being hereinafter called the Equipment and the Equipment constructed, sold and delivered by each Builder being hereinafter sometimes called such Builder's Equipment or its Equipment); and

WHEREAS the Owner-Trustee and HOOKER CHEMICAL PROPERTIES CORPORATION (hereinafter called the Lessee) have entered into a Lease of Railroad Equipment (No. 1) dated as of the date hereof (hereinafter called the Lease) providing for the lease to the Lessee of the Equipment;

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (hereinafter called this Assignment) WITNESSETH: that in consideration of the sum of One Dollar and other good and valuable consideration paid by the Assignee to the Builders, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained, the parties hereto agree as follows:

SECTION 1. Each Builder hereby assigns, transfers and sets over unto the Assignee:

(a) all the right, title and interest of such

Builder in and to each unit of its Equipment when and as severally delivered to and accepted by the Owner-Trustee, subject to payment to such Builder of the amount required to be paid pursuant to Section 4 hereof and of the amounts due from the Owner-Trustee to such Builder under the CSA;

(b) all the right, title and interest of such Builder in and to the CSA (except the right to construct and deliver the Equipment and the right to receive the payments specified in subparagraph (a) of § 4.3 thereof and reimbursement for taxes paid or incurred by such Builder), and except as aforesaid in and to any and all amounts which may be or become due or owing to the Builder under the CSA on account of the indebtedness in respect of the Purchase Price (as defined in the CSA) of the Equipment and interest thereon, and in and to any other sums becoming due from the Owner-Trustee under the CSA, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) of this paragraph, all such Builder's rights, titles, powers, privileges and remedies under the CSA;

without any recourse hereunder, however, against the Builder on account of the failure of the Owner-Trustee to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the CSA, provided, however, that this Assignment shall not subject the Assignee to, or transfer or in any way affect the obligations of such Builder to deliver the Equipment in accordance with the CSA or with respect to its warranties and agreements referred to in Article 14 of the CSA or relieve the Owner-Trustee from its obligations to such Builder contained in Articles 2, 3, 4, 6 and 14 of the CSA, it being agreed that all obligations of such Builder to the Owner-Trustee with respect to the Equipment shall be and remain enforceable by the Owner-Trustee, against and only against such Builder. Each Builder hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for such Builder, to demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Owner-Trustee with the terms and agreements on its part to be performed under the CSA, but at the expense and for the sole benefit of the Assignee.

SECTION 2. Each Builder agrees that it will construct its Equipment in full accordance with the CSA and will deliver the same upon completion to the Owner-Trustee in accordance with the provisions thereof; and that it will perform and fully comply with each of and all the covenants and conditions of the CSA set forth to be performed and complied with by such Builder. The Builder further agrees that it will warrant to the Assignee and the Owner-Trustee that at the time of delivery of each unit of its Equipment under the CSA it had legal title to such unit and good and lawful right to sell such unit and that such unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Owner-Trustee under the CSA and the rights of the Lessee under the Lease; and such Builder further agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by such Builder under the CSA; all subject, however, to the provisions of the CSA and the rights of the Owner-Trustee thereunder. No Builder will deliver any of its Equipment to the Owner-Trustee under the CSA until the CSA, the Lease, the Assignment and the Lease Assignment have been filed in accordance with Section 20c of the Interstate Commerce Act (such Builder being entitled to rely on advice from special counsel for the Assignee that such filing has occurred).

SECTION 3. Each Builder agrees that in any proceeding or action brought by the Assignee under the CSA for any installment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the CSA, such Builder will indemnify, protect and hold harmless the Assignee from and against all expenses, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever claimed by the Owner-Trustee or the Lessee arising out of a breach by such Builder of any obligation with respect to the Equipment or the construction, delivery or warranty thereof, or by reason of any defense, setoff or counterclaim whatsoever arising by reason of any other indebtedness or liability at any time owing to the Owner-Trustee or the Lessee by such Builder. Each Builder's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 15 of the CSA, to strike any defense, setoff, counterclaim or recoupment asserted by the Owner-Trustee or the Lessee in any such proceeding or action and (b) if the court

or other body having jurisdiction in such proceeding or action denies such motion or other action and accepts such defense, setoff or counterclaim as a triable issue in such proceeding or action, the Assignee's prompt notification to such Builder of the asserted defense, setoff or counterclaim and the Assignee's giving such Builder the right, at the Builder's expense, to compromise, settle or defend against such defense, setoff or counterclaim.

Except in cases of articles or materials specified by the Lessee and not manufactured by such Builder and in cases of designs, systems, processes, formulae or combinations specified by the Lessee and not developed or purported to be developed by such Builder, such Builder agrees, except as otherwise specifically provided in Annex A to the CSA, to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee because of the use in or about the construction or operation of any of such Builder's Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to such Builder of any claim actually known to the Assignee which is based upon any such alleged infringement and will give to such Builder the right, at the Builder's expense, to compromise, settle or defend against such claim. Each Builder agrees that any amounts payable to it by the Owner-Trustee or the Lessee with respect to its Equipment, whether pursuant to the CSA or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon such Equipment.

SECTION 4. The Assignee, on each Closing Date fixed as provided in Article 4 of the CSA, shall pay to the appropriate Builder an amount equal to the portion of the Purchase Price of the Equipment as shown on the invoice therefor then being settled for which, under the terms of subparagraph (b) of § 4.3 thereof, is payable in installments, provided that the conditions specified in Paragraphs 8 and 9 of the Participation Agreement have been satisfied and there shall have been delivered to the Assignee (with a copy to the Owner-Trustee) on or prior to such Closing Date, the following documents, in form and substance satisfactory to it and to Messrs. Cravath, Swaine & Moore, special counsel to the Assignee, in such number of counterparts as may be reasonably requested by said special counsel:

(a) a bill or bills of sale from such Builder to the Assignee transferring to the Assignee the security interest of such Builder in such units, warranting to the Assignee and to the Owner-Trustee that, at the time of delivery of such units under the CSA, the Builder had legal title to, and good and lawful right to sell, such units and such units were free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Owner-Trustee under the CSA and the rights of the Lessee under the Lease, and covenanting to defend the title to such units against demands of all persons whomsoever based on claims originating prior to the delivery of such units by such Builder under the CSA;

(b) a Certificate or Certificates of Acceptance with respect to such units as contemplated by Article 3 of the CSA and Article 2 of the Lease;

(c) an invoice of such Builder for such units and a certification by the Owner-Trustee and the Lessee as to their approval thereof;

(d) an opinion of counsel for such Builder, dated as of the Closing Date, addressed to the Assignee and the Owner-Trustee, to the effect that the aforesaid bill or bills of sale have been duly authorized, executed and delivered by such Builder and are valid and effective to vest in the Assignee the security interest of such Builder in such units, free from all claims, liens, security interests and other encumbrances (other than those created by the CSA and the rights of the Lessee under the Lease) arising from, through or under such Builder; and

(e) a receipt from such Builder for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 4) required to be made on such Closing Date to such Builder with respect to such Builder's Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Owner-Trustee.

The obligation of the Assignee hereunder to make payment for any of the Equipment assigned hereunder is hereby expressly conditioned upon the Assignee having on deposit, pursuant to the terms of the Participation Agreement, suffi-

cient funds available to make such payment and upon payment by the Owner-Trustee of the amount required to be paid by it pursuant to subparagraph (a) of § 4.3 of the CSA. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the appropriate Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of Equipment with respect to which payment has not been made by the Assignee.

SECTION 5. The Assignee may assign all or any of its rights under the CSA, including the right to receive any payments due or to become due to it from the Owner-Trustee thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, and upon giving the written notice required in Article 15 of the CSA, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. Each Builder hereby:

(a) represents and warrants to the Assignee and the Owner-Trustee that the CSA was duly authorized, executed and delivered by it, that, assuming due authorization, execution and delivery by the Owner-Trustee, is, insofar as such Builder is concerned, a legal, valid and existing agreement binding upon such Builder in accordance with its terms and that it is now in force without amendment thereto;

(b) agrees that it will from time to time, at the request of the Assignee, make, execute and deliver all such further instruments of assignment, transfer and assurance and do all such further acts as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be; and

(c) agrees that, upon request of the Assignee, it will execute any and all instruments which may be necessary or proper in order to discharge of record the CSA or any other instrument evidencing any interest of such Builder therein or in the Equipment.

SECTION 7. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Utah; provided, however, that the parties shall be entitled to all the rights conferred by Section 20c of the Interstate Commerce Act, such additional rights arising out of the filing or depositing of the CSA and this Assignment as shall be conferred by the laws of any jurisdiction in which the same shall be filed or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the marking on the units of Equipment.

SECTION 8. The rights and obligations of the Builders under this Assignment are several in accordance with their interests and not joint. Accordingly, whenever this Assignment, by use of such designation as "each Builder", "such Builder", or other similar term, confers a right or imposes an obligation upon any Builder or its successor, such right or obligation shall be construed to accrue to or to be enforceable against only the specific Builder giving rise to such right or obligation and its successors as herein provided.

SECTION 9. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Each Builder and the Assignee shall be bound hereunder notwithstanding the failure of any other Builder to execute and deliver this Agreement or to perform its obligations hereunder. Although for convenience this Assignment is dated as of the date first above written, the actual date or dates of execution hereof by each party hereto is as stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officials, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

ACF INDUSTRIES, INCORPORATED,

by

[Corporate Seal]

Vice President

Attest:

Assistant Secretary

UNION TANK CAR COMPANY,

by

[Corporate Seal]

Vice President

Attest:

Assistant Secretary

RICHMOND TANK CAR COMPANY,

by

[Corporate Seal]

Vice President

Attest:

Assistant Secretary

FIRST SECURITY BANK OF UTAH, N.A.,

by

[Seal]

Authorized Officer

Attest:

Authorized Officer

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment is hereby acknowledged as of January 1, 1978.

FIRST SECURITY STATE BANK,
not in its individual capacity
but solely in its capacity as
Trustee,

by

Authorized Officer

STATE OF NEW YORK,)
) ss.:
 COUNTY OF NEW YORK,)

On this day of February 1978, before me personally appeared , to me personally known, who being by me duly sworn, says that he is a Vice President of ACF INDUSTRIES, INCORPORATED, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission expires

STATE OF ILLINOIS,)
) ss.:
 COUNTY OF LAKE,)

On this day of February 1978, before me personally appeared to me personally known, who being by me duly sworn, says that he is a Vice President of UNION TANK CAR COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission expires

STATE OF TEXAS,)
) ss.:
COUNTY OF HARRIS,)

On this 22 day of February 1978, before me personally appeared Jim J. Herring, to me personally known, who being by me duly sworn, says that he is a Vice President of RICHMOND TANK CAR COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Estelle Alldredge
Notary Public

[Notarial Seal]

My Commission expires

STATE OF UTAH,)
) ss.:
COUNTY OF SALT LAKE,)

On this 21st day of February 1978, before me personally appeared Debra J. Hoffman, to me personally known, who being by me duly sworn, says that he is an Authorized Officer of FIRST SECURITY BANK OF UTAH, N.A., that one of the seals affixed to the foregoing instrument is the seal of said national banking association, that said instrument was signed and sealed on behalf of said national banking association by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national banking association.

Theresa L. Quetawski
Notary Public

[Notarial Seal]

My Commission expires